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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 JENNY LISETTE FLORES, et al.,
18 Plaintiffs,
19 v.
20 WILLIAM P. BARR, Attorney General
21 of the United States, et al.,
22 Defendants.
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Case No. 2:85-cv-4544-DMG

***Ex Parte* Application for Leave to File
Proposed Amicus Brief of *Amici
Curiae* the American Academy of
Child and Adolescent Psychiatry
("Amicus 1"), the American Academy
of Pediatrics ("Amicus 2"), the
American Academy of Pediatrics,
California ("Amicus 3"), the
American Federation of Teachers
("Amicus 4"), the American Medical
Association ("Amicus 5"), the
American Professional Society on the
Abuse of Children ("Amicus 6"), the
American Psychiatric Association
("Amicus 7"), the American**

1 Psychoanalytic Association (“*Amicus*
 2 8”), the California American
 3 Professional Society on the Abuse of
 4 Children (“*Amicus* 9”), the Center for
 5 Law and Social Policy (“*Amicus* 10”),
 6 the Children’s Defense Fund
 7 (“*Amicus* 11”), the Lutheran
 8 Immigration and Refugee Service
 9 (“*Amicus* 12”), the National
 10 Association of Social Workers
 11 (“*Amicus* 13”), the National
 12 Education Association (“*Amicus* 14”),
 13 the Texas Pediatric Society (“*Amicus*
 14 15”), the Women’s Refugee
 15 Commission (“*Amicus* 16”), together
 16 with First Focus on Children
 17 (“*Amicus* 17”), Save the Children
 18 Action Network, Inc. (“*Amicus* 18”),
 19 Save the Children Federation, Inc.
 20 (“*Amicus* 19”), United States Fund for
 21 UNICEF (“*Amicus* 20”), and ZERO
 22 TO THREE (“*Amicus* 21”), in
 23 support of Plaintiffs

18 The American Academy of Child and Adolescent Psychiatry, the American
 19 Academy of Pediatrics, the American Academy of Pediatrics, California, the
 20 American Federation of Teachers, the American Medical Association, the
 21 American Professional Society on the Abuse of Children, the American Psychiatric
 22 Association, the American Psychoanalytic Association, the California American
 23 Professional Society on the Abuse of Children, the Center for Law and Social
 24 Policy, the Children’s Defense Fund, the Lutheran Immigration and Refugee
 25 Service, the National Association of Social Workers, the National Education
 26 Association, the Texas Pediatric Society, and the Women’s Refugee Commission,
 27 together with First Focus on Children, Save the Children Action Network, Inc.,
 28 Save the Children Federation, Inc., UNICEF USA, and ZERO TO THREE

(together, Amici Children’s Organizations) hereby submit this *ex parte* application for an order granting leave to participate as *amici curiae* in support of Plaintiffs. (Plaintiffs’ Motion). The Amici Children’s Organizations’ proposed brief is attached to this application as Exhibit A. The Amici Children’s Organizations respectfully request that the Court consider the proposed brief in ruling on Plaintiffs’ and Defendant’s Motions.

As required by Local Civil Rules L.R. 7-19 and 7-19.1, Amici Children’s Organizations contacted counsel for Plaintiffs and the federal government in order to ascertain the parties’ positions on this application. Plaintiffs and the federal government both consented to the participation of the Amici Children’s Organizations.¹

The federal government’s final rule, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Children” (“final rule”), found at 8 C.F.R. pts. 212, 236; 45 C.F.R. pt. 410 (2019), and as published at 84 Fed. Reg. 44,392 (Aug. 23, 2019), is a clear and undeniable departure from the requirements of the longstanding *Flores* Settlement Agreement (“FSA”), which “sets out nationwide policy for the detention, release, and treatment of minors in the custody” of the federal government. (FSA ¶ 9.) The FSA, among its many requirements and minimum standards, mandates that the federal government “treat . . . all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors,” detain children “in the least restrictive setting appropriate to the [child’s] age and special needs,” and “hold minors in facilities

¹ Counsel for Amici Children’s Organizations contacted the following counsel: (1) for Plaintiffs: Holly Cooper, Immigration Law Clinic, U.C. Davis School of Law, 400 Mrak Hall Drive, Davis, CA 95616-5201, Phone: 530-754-4833, Email: hscooper@ucdavis.edu; and (2) for the federal government: Sarah B. Fabian, U.S. Department of Justice, Office of Immigration Litigation, P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044, Phone: 202-532-4824, Email: sarah.b.fabian@usdoj.gov.

1 that are safe and sanitary” for no more than twenty (20) days. (FSA ¶¶ 11, 12A;
 2 *Flores v. Lynch* (C.D. Cal. 2015) 212 F.Supp.3d 907, 914, *aff’d in part, rev’d in*
 3 *part and remanded* (9th Cir. 2016) 828 F.3d 898.)

4 While the FSA as originally entered into was intended to “terminate the
 5 earlier of five years from the date of final court approval of th[e] Agreement or
 6 three years after the court determines that the INS is in substantial compliance with
 7 the Agreement, *except the following*: the INS *shall continue* to house the general
 8 population of minors in INS custody in facilities that are state-licensed for the care
 9 of dependent minors.” (FSA ¶ 40.) In 2001, the parties stipulated to a modification
 10 to the FSA, allowing it to remain in force until forty-five days after the federal
 11 government’s “*publication of final regulations implementing this Agreement.*”
 12 (Stipulation Extending Settlement Agreement at 1, *Flores v. Reno*, No. 85-cv-4544-
 13 RJK (Px), Dkt. No. 13 (C.D. Cal. Dec. 12, 2001) (emphasis in original).) As further
 14 discussed in the Amici Children’s Organizations’ proposed brief, the final rule’s
 15 changes to the key provisions of the FSA clearly violate the requirement that the
 16 rule “implement[]” the FSA.

17 The Amici Children’s Organizations, as organizations committed to the care,
 18 health, well-being, and welfare of immigrant children in the United States, have a
 19 strong interest in ensuring that the final rule as currently written not be allowed to
 20 go into effect and that the FSA not be terminated until it is properly implemented at
 21 some future time by rule that reflects the spirit, intent, and mandate of the FSA.²
 22 Should the court allow the FSA to terminate and permit the final rule to persist in
 23 its current form, it will inflict myriad unnecessary, lasting, and irreversible
 24 government-sanctioned harm to the general welfare, mental and physical health,
 25 and educational development of the tens of thousands of immigrant children that
 26

27 ² Further information on each of the Amici Children’s Organizations is included in
 28 Exhibit 1 to the proposed brief, attached hereto as Exhibit A.

1 cross the U.S. border each year. The Court's immediate intervention is needed to
2 prevent the final rule, which is directly in conflict with the FSA, from going into
3 effect.

4 Accordingly, the Amici Children's Organizations respectfully request that
5 the Court grant the instant *ex parte* application for leave to file the proposed brief in
6 support of Plaintiffs.

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Dated: August 30, 2019

Respectfully submitted,

By: /s/ John. S. Purcell

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, I electronically filed the foregoing documents and attachments with the Clerk for the United States Court for the Central District of California by using the appellate CM/ECF system. A true and correct copy of this Ex Parte Application has been served via the Court's CM/ECF system on all counsel of record.

Dated: August 30, 2019

/s/ John S. Purcell

John S. Purcell